

Legislative Concept XX

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Amends operative date for state statutes that relate to the assumption of authority to administer permits for discharge of dredge or fill materials under Section 404 of Federal Water Pollution Control Act.

Amends and adds provisions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to assumption of authority to administer permits under Section 404 of the Federal Water Pollution Control Act; amending sections 11 and 12, chapter 516, Oregon Laws 2001, and ORS 196.800, 196.817, and 196.990; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 11, chapter 516, Oregon Laws 2001, is amended to read:

Sec. 11. The amendments to ORS 196.800, 196.810, 196.817, 196.825, 196.850, 196.895, 196.905, 196.990, 390.835, 421.628 and 459.047 by sections 3, 4 and 5 of this 2013 Act, [sections 1 to 10 of this 2001 Act] sections 1 to 10, chapter 516, Oregon Laws 2001, section 97, chapter 14, Oregon Laws 2003, sections 8, 12, and 13, chapter 253, Oregon Laws 2003, section 45, chapter 598, Oregon Laws 2003, section 15, chapter 738, Oregon Laws 2003, section 64, chapter 71, Oregon Laws 2007, section 5, chapter 625, Oregon Laws 2007, sections 3, 7, and 15, chapter 849, Oregon Laws 2007, section 8, chapter 231, Oregon Laws 2009, section 4, chapter 342, Oregon Laws 2009, section 19, chapter 343, Oregon Laws 2009, section 2, chapter 16, Oregon Laws 2011, and section 4, chapter 406, Oregon Laws 2011, and the repeal of section 2, chapter 45, Oregon Laws 1989, by [section 13 of this 2001 Act] section 13, chapter 516, Oregon Laws 2001, become operative on the date specified by the Department of State Lands in a letter to the Legislative Assembly. The Department of State Lands shall submit the letter to the appropriate legislative committee during a regular session of the

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Legislative Assembly, or to the appropriate legislative interim committee between legislative sessions. The date specified by the Department of State Lands shall be at least sixty days[*January 2 of the even-numbered year*] following the date the United States Environmental Protection Agency grants authority by letter to the [Division] Department of State Lands to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended)[*and the Legislative Assembly approves the grant of authority*].

SECTION 2. Section 12, chapter 516, Oregon Laws 2001, is amended to read:

Sec. 12. (1) Prior to the operative date described in section 1 of this 2013 Act, t[*T*]he [Division] Department of State Lands may take any action necessary to prepare to fully assume authority to administer permits for the discharge of dredge or fill materials under section 404 of the federal Water Pollution Control Act (P.L. 92-500, as amended).[*implement the provisions of this 2001 Act prior to the operative date of this 2001 Act*].

(2) The [division] Department of State Lands shall periodically report to the appropriate committee of the Legislative Assembly on the status of its effort to assume authority to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended).

[*(3) After the Legislative Assembly approves the grant of authority, the division shall notify the Legislative Assembly prior to the transfer of authority from the United States Environmental Protection Agency.*]

SECTION 3. ORS 196.800, as amended by section 8, chapter 253, Oregon Laws 2003, section 15, chapter 738, Oregon Laws 2003, section 3, chapter 849, Oregon Laws 2007, and section 19, chapter 343, Oregon Laws 2009, is amended to read:

196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

(1) "Channel relocation" means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel.

(2) "Estuary" means:

(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes and submerged lands; and

(b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.

(3) "Fill" means the deposit by artificial means of material at one location in any waters of this state.

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(4) "General authorization" means an authorization granted under ORS 196.850 for a category of activities involving removal or fill, or both, without a permit.

(5) "General permit" means a permit developed pursuant to ORS 196.817 that is issued:

(a) On a statewide or geographical basis; or

(b) For removal activities or fill activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

(6) "Intermittent stream" means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(7) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(8) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the effect altogether by not taking a certain action or parts of an action;

(b) Minimizing the effect by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.

(9) "Nationwide permit" means a permit that was issued by the United States Corps of Engineers pursuant to Section 404(e) of the federal Clean Water Act, 33 USC § 1344(e), and that is applicable in Oregon.

~~[(9)]~~(10) "Person" means a person, a public body, as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

~~[(10)]~~(11) "Practicable" means capable of being accomplished after taking into consideration the cost, existing technology and logistics with respect to the overall project purpose.

~~[(11)]~~(12) "Public use" means a publicly owned project or a privately owned project that is available for use by the public.

~~[(12)]~~(13) "Removal" means:

(a) The taking of material in any waters of this state; or

(b) The movement by artificial means of material within the bed of such waters, including channel relocation.

~~[(13)]~~(14) "Water resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

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1 ~~[(14)]~~~~(15)~~ "Waters of this state" means all natural waterways, tidal and nontidal bays, intermittent
2 streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the
3 boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those
4 portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated
5 under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution
6 Control Act, as amended.

7 ~~[(15)]~~~~(16)~~ "Wetland conservation plan" means a written plan providing for wetland management
8 containing a detailed and comprehensive statement of policies, standards and criteria to guide public and
9 private uses and protection of wetlands, waters and related adjacent uplands and which has specific
10 implementing measures and which apply to designated geographic areas of the State of Oregon.

11 ~~[(16)]~~~~(17)~~ "Wetlands" means those areas that are inundated or saturated by surface or ground water at
12 a frequency and duration sufficient to support, and that under normal circumstances do support, a
13 prevalence of vegetation typically adapted for life in saturated soil conditions.

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14 **SECTION 4.** ORS 196.817 is amended to read:

15 **196.817** (1)(a) Notwithstanding ORS 196.810, the Department of State Lands may establish a
16 removal or fill general permit:

17 (A) By rule for processing applications on a statewide or geographic basis; or

18 (B) By order for an applicant or group of applicants to cover activities that are substantially similar in
19 nature, are recurring or ongoing, and have predictable effects and outcomes.

20 (b) The department must find that the project is in compliance with the review standards set forth in
21 ORS 196.600 to 196.905 and would not result in long-term harm to water resources of this state. A
22 project would not result in long-term harm to water resources of this state if the project will cause only
23 minimal adverse environmental effects when performed separately and will have only minimal
24 cumulative adverse effects on the environment.

25 (c) The department shall condition any such general permit upon actions necessary to minimize
26 environmental effects.

27 (2)(a) Any person proposing to conduct an action under a general permit specified in subsection
28 (1)(a)(A) of this section shall apply to the department in accordance with procedures set forth by the
29 department by rule.

30 (b) Any person proposing to conduct an action under a general permit specified in subsection
31 (1)(a)(B) of this section shall apply to the department in accordance with procedures set forth by the
32 department by order.

33 (3) The department shall amend or rescind any general permit upon a determination that the activities

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1 conducted under the permit have resulted in or would result in unacceptable individual or cumulative
2 environmental effects or long-term harm to the water resources of this state.

3 ~~..... (4) The Department of State Lands may administer and enforce nationwide permits. The Department~~
4 ~~may adopt rules to carry out this provision.~~

5 ~~[(4)](5) Any person proposing to conduct an action under a general permit or a nationwide permit~~
6 shall pay the applicable fee required under ORS 196.815 for individual permit applications.

7 **SECTION 5.** ORS 196.990, as amended by section 7, chapter 516, Oregon Laws 2001, is amended to
8 read:

9 196.990. (1)(a) A person commits the offense of unlawful removal from or filling of waters of this
10 state if the person ~~[knowingly]~~ **willfully or** ~~with ordinary negligence~~ violates ORS 196.810 or an order
11 issued thereunder, or any rule, or condition of ~~any permit or other authorization~~ issued under ORS
12 196.600 to 196.905.

13 ~~..... (b) Notwithstanding ORS 161.067(3) and 161.515, unlawful removal from or filling of waters of this~~
14 ~~state is a [a] misdemeanor offense punishable by a fine of [up to] \$10,000 [per] for each day of violation.~~

15 ~~..... (2)(a) A person commits the offense of supplying false information related to removal from~~
16 ~~or filling of waters of this state if the person knowingly makes a false statement, representation,~~
17 ~~or certification in any application, record, report, plan, or other document filed or required to be~~
18 ~~maintained under ORS 196.600 to 196.905 or any rule, order, permit or other authorization~~
19 ~~issued thereunder.~~

20 ~~..... (b) Notwithstanding ORS 161.067(3) and 161.515, supplying false information related to~~
21 ~~removal from or filling of waters of this state is a misdemeanor offense punishable by a fine of~~
22 ~~between \$5,000 and \$10,000 for each instance of violation.~~

23 ~~..... (3)(a) A person commits the offense of interfering with records related to removal from or~~
24 ~~filling of waters of this state if the person knowingly falsifies, tampers with, or renders~~
25 ~~inaccurate any monitoring device or method required to be maintained under ORS 196.600 to~~
26 ~~196.905 or any rule, order, permit or other authorization issued thereunder.~~

27 ~~..... (b) Notwithstanding ORS 161.067(3) and 161.515, interfering with records related to~~
28 ~~removal from or filling of waters of this state is a misdemeanor offense punishable by a fine of~~
29 ~~between \$5,000 and \$10,000 for each instance of violation.~~

30 **SECTION 6.** This 2015 Act being necessary for the immediate preservation of the public peace,
31 health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

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